IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Smt.Chandra Kala
Vs.
Indian Council of Medical Research & Anr.

S.B. CIVIL WRIT PETITION NO.1065/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 15th December, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.S.N. Trivedi, Advocate for the petitioner.
Mr.J.L. Purohit, Advocate for the respondents.

BY THE COURT

Heard learned counsel for the parties and perused the records.

The petitioner has challenged the order dated 22nd February, 2002 passed by the respondent No.2 whereby her services were terminated. According to the petitioner one post of Research Officer/Demographer has been provided to various medical colleges by Indian Council of Medical Research (for short 'I.C.M.R.') including the Sardar Patel Medical College, Bikaner.

The respondent No.2 invited applications for recruitment against the aforesaid post. The petitioner being eligible applied and was called for interview. She was eventually appointed on the said post by order dated 11th December, 1998 up to 31st March, 1999. Her services were later extended by order dated 01st April, 1999. She was later fixed at the minimum of Rs.8000/- in the pay scale of Rs.8000-275-13500 w.e.f. 06th November, 2000 by order dated 08th March, 2001. Suddenly, however the respondent No.2 sent a notice of termination to the petitioner vide letter dated 22nd February, 2002 purported to have been issued in pursuance of the I.C.M.R. letter dated 12th February, 2002. Reason for petitioner's termination

assigned in the notice was that petitioner does not possess the requisite qualifications. No opportunity of hearing was provided to the petitioner before terminating her services and a simple notice of one month was given. According to the petitioner, there are no statutory rules regulating service condition of the Demographers appointed in the scheme of I.C.M.R. and her termination has been made only with a view to accommodating a fresh hand. Earlier also one Raj Kumar Vyas was appointed on temporary basis and continued for seven years but when he resigned the petitioner was appointed. It is on these premises the petitioner has assailed the order of his termination.

Learned counsel for the respondents argued that the petition was not maintainable because the petitioner was appointed in the scheme of I.C.M.R. which was functioning under the control of Central Government. The petitioner was not an employee of the State Government. It was simply a temporary post in which the function of the Research Officer/Demographers is to collect datas. Although the

petitioner was appointed on the basis of knowledge of computer on temporary basis. A proposal was sent to I.C.M.R. for approval of her appointment and for clarification of required qualification for such appointment. The I.C.M.R. refused to approve the proposal on the premise that the petitioner did not possess the requisite qualification. As far as Raj Kumar Vyas is concerned, he was having qualification of M.Sc. in Geology therefore he was a qualified candidate but the petitioner has passed M.A. in History.

Learned counsel for the respondents has invited attention of the Court towards advertisement Annexure-R1/3 dated 08th September, 1998 published in Rajasthan Patrika, Bikaner Edition, according to which the qualification for appointment on the post of Research Officer/Demographer is M.Sc. with specialization in demography. It is therefore been submitted that the appointment of the petitioner was illegally made. She could not be therefore continued in service. Learned counsel for the respondents has relied upon the judgments of Hon'ble Supreme Court in Principal, Mehar Chand Polytechnic & Anr. vs.

Anu Lama & Ors. reported in 2006 (7) SCC 161, State of U.P. vs. Neeraj Awasthi & Ors. reported in 2006 (1) SCC 667 and Mohd. Sartaj & Anr. vs. State of U.P. & Ors. reported in 2006 (2) SCC 315.

The Hon'ble Supreme Court in Mohd. Sartaj (supra) in some what similar circumstances while considering the arguments with regard to non-compliance of principles of natural justice held in para 6 of the judgment as under:-

> "**6** Regarding the non-compliance with natural justice, the Court opined that in the present case there was no procedural illegality and relied upon State of M.P. v. Shyama Pardhi where it was observed that the question of violation of natural justice did not arise in a case where he prerequisite minimum qualification for the appointment was not fulfilled and resulted in the cancellation was taken swiftly within a short interval and merely because the appellants were allowed to continue on the post in pursuance of the interim order, would not entitle them to the post on which they were illegally appointed."

Having heard learned counsel for the parties, I find that

although the appointment of the petitioner was made on temporary basis in the scheme of I.C.M.R. but when the petitioner was appointed, she had the qualification of B.Ed. and M.A. in History and knowledge of computer. Her case was referred to I.C.M.R. by the respondents for relaxation of the requirement of qualification, the I.C.M.R. declined to approve her appointment and grant relaxation. The advertisement dated 08th September, 1998 clearly indicates therein that the qualification was M.Sc. with Statistics and specialization in Demography. When the case of the petitioner was referred to I.C.M.R. by the respondent No.2 the I.C.M.R. by their letter dated 28th October, 1998 required the respondent No.2 to re-advertise the post with prescribed qualification and experience as per the rules. It is with reference to this that the notice of termination was served upon the petitioner.

In the circumstances therefore no fault can be found with the order passed by the respondent No.2. Even if the petitioner served the respondents for some time, that does not have the effect of dispensing with the requirement of the requisite

qualification nor does it in any manner alter the rule relating to the qualification. When the I.C.M.R. had required the respondent No.2 to re-advertise the post, the petitioner should not have been appointed and the post ought to have been re-advertised. Having been appointed in this manner, the petitioner cannot claim continuation of such an illegal appointment.

I therefore do not find any merit in this petition. The writ petition is accordingly dismissed with no order as to costs.

[MOHAMMAD RAFIQ],J.

AKC.